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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 106/2018

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State

versus

IQBAL

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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01.03.2018

The trial Court record has been received.

We have heard Ms. Aashaa Tiwari, Additional Public Prosecutor for the State and proceed to dispose of the leave petition.

The State has preferred the present leave petition to assail the judgment dated 24.10.2017 in SC No. 13/16, arising out of FIR No. 1044/2015 registered at P.S. Bhajanpura under Sections 451/376/354 IPC and Section 6 POSCO Act against the respondent/accused. By the impugned judgment, the trial Court has acquitted the respondent/accused.

The case of the prosecutrix was that she and her sister were home in the afternoon after returning from school. The parents were away. Their brother was outside the house. She stated that the mother had asked her to remain inside the house with her younger sister and not to open the door for anyone except her brother. She stated that her sister desired to use the toilet

which was situated outside the house and therefore, the door was opened. When the sister returned from the toilet, the accused, who was a neighbour and was standing by the railing, also entered in the house and thereafter, she was sexually assaulted by the accused.

She claimed that she raised an alarm and her brother came with his cousin and the father of the prosecutrix was called by the brother on mobile call by using the mobile phone of the cousin brother.

The statement of the brother of the prosecutrix was that when he came in, the accused was found with the prosecutrix and he had pulled down her underwear. He explained that he was trying to remove a worm. Upon intervention of the brother, the accused left the place.

The trial Court found from the testimony of the Investigating Officer that the toilet was situated inside the house and thus, there was no question of the door being opened to let the younger sister of the prosecutrix go out of the room. The trial Court also found that the brother had claimed that he had made the telephone call to his father by using the mobile phone of the mother which was left at home.

We have perused the MLC report of the prosecutrix. The MLC contains several discrepant notings. At one place, the MLC shows that the form was filled on 01.10.2015 at 9.12 AM, it appears that the initial notings were made as *'attempt to sexual assault has sought by neighbour as told by the patient'* herself. However, at 10 PM, the noting made on the MLC is that *'At about 2 PM on 01.10.2015 and a person named, Iqbal tried to hold A's hand but when A's brother came, Iqbal left her hand. She gives no history of touching her private part or removal of clothes'*. The MLC also contains an endorsement with regard to the statement made by the mother of the

prosecutrix, wherein, she states that nothing wrong had happened with her daughter and that she does not want her internal examination. The aforesaid being the position and there being no other corroborative evidence against the accused, we are of the view that the impugned judgment does not call for interference by us by grant of leave.

VIPIN SANGHI, J

VINOD GOEL, J

MARCH 01, 2018

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